IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1172 OF 2005
IN
SUIT NO.683 OF 2000

Smt. Sohanikumari Surajmull Gouti ...Plaintiff

Versus

Mr. Ranjitmull Joychandlal Gouti & Anr. ...Defendants

Mr. Sharukh Kathawala, Advocate, i/b. M/s. Vimadalal & Co., with Mr. N.V. Vimadalal, Advocate, for Plaintiff.

Mr. S.N. Shah, Advocate, with Mr. Sanjay Jain, Advocate, i/b. Legal Juris, for Defendants.

CORAM : S.J. VAZIFDAR, J.
DATED : 22ND AUGUST, 2006

P.C. :

. The Notice of Motion is taken out by the Plaintiff essentially to carry out certain alterations regarding shifting of the entrance and closing of certain entrances in respect of three flats bearing Nos.802, 803 and 804.

2. The above suit and Suit No.2686 of 2002 also filed by the Plaintiff under section 6 of Specific Relief Act concern a family dispute regarding the title to the said flats.

3. It appears that initially Flat Nos.802, 803 and 804 were purchased in the names of Respondent No.2, Defendant No.1 and the Plaintiff's husband respectively. Pursuant to an agreement dated 27th July, 1979, Defendant No.1 agreed to sell Flat No.803 to the Plaintiff. The present case is for specific performance of that agreement.

4. By an order dated 28th March, 2003, in Notice of Motion No.1099 of 2004, the Plaintiff was permitted to occupy Flat No.803. By an order dated 17th August, 2002 in Suit No.2686 of 2002, the Plaintiff has also been permitted to occupy Flat No.802. That order is under appeal. Flat No.804 was auctioned by the Income Tax Authority and the same has been purchased by Respondent No.2.

5. When the Flats were purchased initially on 14th March, 1974, there were several structural alterations, obviously with a view to utilize three flats as one composite unit for the members of the aforesaid families. That position has now changed. The Plaintiff is an elderly lady. She lives with her unmarried daughter. It is true that at present the members of the families and the staff of Respondent

No.2, who occupy Flat No.804 have access to Flat No.803. The Plaintiff is, therefore, left with virtually no protection.

6. In order to protect the entrance to Flat No.803, the Plaintiff has sought permission to construct a door at points ’A’ and ’B’ shown in the plan annexed as Exhibit "B" to the affidavit in support of the Notice of Motion and to block the opening at points ’C’ and ’D’.

7. Mr. Kathawala submitted that the flats ought to be restored to their original position as per the records of the society. The force of this submission is dependant on the final orders in the above two suits which would finally decide the rights of the parties in respect thereof. At first blush, the blocking of points ’C’ and ’D’ and the construction of a door at points ’A’ and ’B’ seems reasonable. However the plan at Exhibit "B" does not indicate the structural changes which the families had made to the said flat.

8. For instance in Flat No.804 the room described as a bed room would have no access as the wall to the left has been fully constructed and access thereto is

only from points 'C' and 'D'. Further, it is important to note that Respondent No.2 is not a party to the suit. He is a party only to the Notice of Motion. From the plaint, prima facie, it appears that the Plaintiff adopted proceedings against Respondent No.2 for blocking the entrance to points 'C' and 'D'. If the order dated 17th August, 2002 is not set aside in appeal and the Plaintiff is permitted to occupy Flat No.802, an entrance from point 'D' perpendicularly downwards at this stage would not affect anyone except the Plaintiff as the same, if constructed, would without further alterations to the structural alterations already made, prevent access to the bed room of Flat No.802 on the right hand side of the flat. However if the Plaintiff is deprived of possession of Flat No.802, the entrance from point 'D' perpendicularly downwards would affect the access to any other occupant of the said bed room.

9. It is essential, however, that the Plaintiff has independent access to Flat No.803 for the purpose of protecting herself, her daughter and her use and enjoyment thereof to the exclusion of others. In the circumstances, the following orders are passed :-

(i) Subject to any orders that may be

passed in the Appeal filed by Respondent No.2, the Plaintiff shall be entitled to construct an entrance in the passage at point ’D’ in the plan (Exhibit "B" to the plaint).

(ii) In the event of the Plaintiff not succeeded in retaining possession of Flat No.802, the Plaintiff is at liberty to construct a door between the points marked ’X’ and ’X1’ by me. The red line going through the lobby has also been drawn by the Court as that is the actual construction at sight at present.

(iii) The construction of any entrance at point ’D’ shall not be permitted pending the said Appeal.

(iv) Needless to add, this order is without prejudice to the rights and contentions of all the parties in respect of all the flats.

(v) The Notice of Motion is accordingly disposed of.